



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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January 22, 2013

Theodore Levatter

Reno, Nevada 89509

Re: Open Meeting Law Complaint / A.G. File No. 12-038
Reno City Council

Dear Mr. Levatter:

We have investigated your Open Meeting Law (OML) complaint that alleges a violation by the Reno City Council (Council) during its public meeting on November 14, 2012.

This Office has jurisdiction to investigate OML complaints and seek civil remedies against public bodies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

I.

COMPLAINT AND FACTS

The complaint alleged a violation of NRS 241.020(2)(c)(1)—the clear and complete standard. Our discussion with the complainant, Mr. Levatter, revealed that an important contextual specificity was lacking in the agenda item. (Item C.4 is set out in full below.) The complaint is substantively based on an allegation that the agenda item failed to give notice to the public that "Limited Guaranty," a generic sounding topic potentially relevant to a host of city business, was in fact a proposed personal guarantee from the Reno Aces' owners to convey the Reno Aces' stadium free and clear of liens to the City of Reno (City) at the end of the team's lease with the City. The stadium project is a significant matter in the community.

II.

DISCUSSION

The OML requires any agenda item to be a "clear and complete statement of the topics to be discussed during the meeting." This standard as applied and as interpreted by the Supreme Court in *Sandoval v. Board of Regents*, 119 Nev. 148 P.3d (2003) was based in part on legislative history.¹ The *Sandoval* Court stated that the Legislature enacted the statute because "incomplete and poorly written agendas deprive citizens of their right to take part in government" and "interfere with the 'press' ability to report the actions of government." Furthermore, the *Sandoval* Court stated that when a matter of significance is to be debated, a higher degree of specificity is required. *Id.* at 154-155, citing *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000).

Our investigation and review of the minutes of the discussion of item C.4 indicate that a higher degree of specificity was needed to give the public notice of the significance of the context in which the item's topic would be discussed. Agenda item C.4 from the November 14, 2012 meeting is set out below:

"C Old Business

C.4 Staff Report (For possible action): Discussion, direction to staff and possible approval of Limited Guaranty pertaining to Settlement and Restructuring Agreement."

The complaint alleged the item, standing alone, did not provide sufficient notice that the "Limited Guaranty pertaining to Settlement and Restructuring Agreement" pertained to a proposed guaranty agreement between the City of Reno and the owners of the Reno Aces baseball stadium. Restructuring of the stadium's financial support from the City of Reno and proposed changes to that support were and are of significant interest to the public.

The item violated the clear and complete standard because it did not provide a vital contextual link to the issue of proposed restructuring of financial arrangements with the stadium's owners. Members of the public reviewing the November 14, 2012 meeting were entitled under the OML to have received notice that reference in the agenda item to something entitled "Limited Guaranty" was a proposed personal guarantee, which Aces' team owners proposed to give to the City, that the owners would convey to the City title to the stadium free and clear of liens at the end of the 30-year stadium lease. Item C.4 did not provide this level of notice. This issue is of such significance that more specificity in the agenda item was required.

We have reviewed the minutes of not only this meeting but an earlier meeting held November 7, 2012. There is no evidence that the omission of contextual information from item C.4 (11-14-12) was other than inadvertent. The Guaranty had

¹ Hearing on S.B. 140 Before the Assembly Governmental Affairs Committee, 1989 Leg. 65th Sess. (May 10, 1989).

been mentioned in the earlier meeting. On November 7, 2012 Council member Pierre Hascheff clarified in open session (item E.3) that the personal guarantee (Limited Guaranty) being amended by staff, would be brought back to the Council later. Deputy City Attorney Jonathan Shipman also stated the personal guarantee would appear on the Council's next agenda. Clearly there was no intent to avoid explaining the context for the "Limited Guaranty."

Recently, on subsequent agendas, the Council has reviewed matters pertaining to the financial structure of the City's involvement and support of the Aces' stadium project.

At a joint meeting on November 28, 2012 of the Council and the Redevelopment Agency Board, there was an agenda item regarding the baseball stadium project. This item clearly provided the necessary context and specificity. It read:

"4. Presentation, discussion and possible direction to staff regarding the financial restructuring of the Baseball Stadium project and related agreements. Topics of discussion may include, without limitation, project history, development agreements, the current and future financial condition of the Agency, and the current and future financial condition of the City (For Possible Action)."

At a subsequent joint meeting on December 12, 2012, of the Council and the Redevelopment Agency Board, agenda item E.1 provided clear and complete notice of the matters to be discussed that evening. It read:

"E.1 Discussion and potential direction to staff regarding the financial restructuring of the Reno Aces Baseball Stadium project. Topics anticipated to be considered during this agenda item include: (a) the current and future financial condition of the Redevelopment Agency; (b) the current and future financial condition of the City of Reno; and, (c) possible reformation and/or amendments to the: (i) Settlement and Restructuring Agreement dated November 14, 2012; (ii) Support Payments Agreement (Reno Aces Stadium) dated November 14, 2012; and (iii) Limited Guaranty Pertaining to the Settlement and Restructuring Agreement dated November 14, 2012. (For Possible Action)"

III.

CONCLUSION

We have discussed these issues with legal counsel for the Council. These recent Council agenda items show that the Council has taken corrective action which "cures" the violation. Because action on agenda item C.4 taken earlier in the November 14, 2012 meeting was rescinded by the Council later in the day, we feel that adequate corrective action has already been taken and is sufficient to resolve this complaint.

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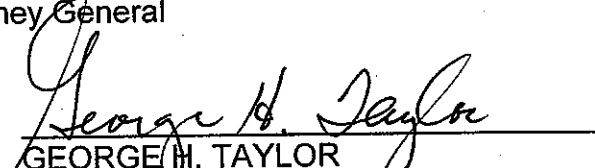
Part XI in the OPEN MEETING MANUAL (11th ed. 2012) encourages self-correcting action so that public bodies may quickly and efficiently conduct their business.² We are confident that future agenda items involving the stadium project will comply with the OML.

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



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GHT/CG

cc: John J. Kadlic, Reno City Counsel
Council Members:
Mayor Robert Cashell
Jenny Brekhus
Sharon Zadra
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Neoma Jardon
Hillary Schieve

² § 11.01 General

When a violation of the OML occurs, the Office of the Attorney General recommends that the public body immediately cure the violation. Although it may not obliterate the violation, corrective action should be taken so that the business of government is accomplished in the open.